

Wood, Douglas

From: Yaen, Christopher
Sent: Wednesday, January 03, 2007 9:17 AM
To: Wood, Douglas
Cc: Helms, Larry
Subject: RE: Petition to vacate terminal disclaimer, App 09705579

-----Original Message-----

From: Wood, Douglas
Sent: Monday, November 27, 2006 3:10 PM
To: Yaen, Christopher
Cc: Helms, Larry
Subject: Petition to vacate terminal disclaimer, App 09705579

TO: Director, TC AU 1643

FROM: Douglas Wood
Senior Petitions Attorney
Office of Petitions

SUBJECT: Petition to Vacate Terminal Disclaimer

In the instant application No. 09/705,579, applicant has filed a petition under 37 CFR 1.182 to withdraw a recorded terminal disclaimer as unnecessary.

Please have the examiner review the petition and indicate in writing below whether and why (1) the recorded terminal disclaimer is no longer applicable to the one or more claims and should be vacated, or (2) the recorded terminal disclaimer remains applicable to one or more claims and should be retained.

PLEASE REPLY WITHIN ONE WEEK FROM THE ABOVE DATE. THANK YOU.

Examiner (please initial item one or two below and explain your reasoning in the space provided)

 CY (1) the terminal disclaimer **does not** apply to any claim currently of record because: claim 71 as currently presented is deemed allowable and non-obvious over the US Patent 5,720,954. Specifically the combination of the antibody and Vinorelbine is not obvious over the issued US Patent because the use of the Vinorelbine in combination with the anti-her2 antibody produced unexpected results.

 (2) the terminal disclaimer **does** apply to at least one claim of record (Claim #) , because

DOUGLAS I. WOOD
SENIOR PETITIONS ATTORNEY
OFFICE OF PETITIONS
U.S. PATENT AND TRADEMARK OFFICE
MDW 7D25
571-272-3231